

## **ADMINISTRATIVE PROCESS FOR UNCONTESTED ROGERS REVIEWS AND EXTENSIONS**

### **INTRODUCTION:**

The Probate and Family Court Department has developed an administrative process for uncontested *Rogers* reviews and extensions. This process allows for timely review of these matters and eliminates the need for counsel and treating physicians to appear in court when there is no objection to the treatment plan extension requested.

Upon submission of the required filings, uncontested requests for renewal of treatment plans for the ward may be processed by the assistant judicial case manager(s) designated by the First Justice of a Division. After review of the filings, the assistant judicial case manager will make a recommendation to the judge for routine allowance of the treatment plan for a defined period of time, most often twelve (12) months, or, for a hearing.

Instructions for the use of the administrative process and the forms designated for use are set forth below.

Comments and suggestions may be forwarded to Attorney Jocelynne Welsh at [jocelynne.welsh@jud.state.ma.us](mailto:jocelynne.welsh@jud.state.ma.us)

## **ADMINISTRATIVE PROCESS FOR UNCONTESTED ROGERS REVIEWS AND EXTENSIONS**

Initial petitions for guardianship seeking authority to administer antipsychotic medication to a proposed ward will be determined by a judge. Initial petitions and all annual reviews for wards who are minors will be determined by a judge.

Uncontested requests for renewal of treatment plans for the ward may be processed by the assistant judicial case manager(s) designated by the First Justice of the Division.

If no changes to the original treatment plan are proposed, and there is no contest, the treatment plan may be recommended for extension for twelve (12) months.

Proposed changes to medications or dosage which offer increased treatment options for the ward or which add newly approved antipsychotic medications to the patient's regimen and which are assented to by the ward's attorney will be considered for extension of the order without a hearing. If the treatment plan does not adequately address the proposed changes, the matter shall be scheduled for a hearing.

Uncontested *Rogers* review filings which have been reviewed by an assistant judicial case manager will be submitted to the judge with recommendation for allowance or hearing.

**Duties of Petitioner**

Submit motion to extend (and/or amend) treatment plan.

Submit affidavit and treatment plan prepared by treating physician or certified psychiatric nurse clinical specialist.

Petitioner has an affirmative obligation to represent to the court that the file is complete (i.e. necessary pleadings have been presented); that the proposed treatment plan is uncontested; and that therefore, the matter may be reviewed administratively.

**Duties of Rogers monitor**

Review details of Appointment of Monitor form (CJ-P 115).

Meet with ward within 45 days of the review date.

Prepare report which details:

- 1.where and in what circumstances ward is currently living;
- 2.substance of meeting with the ward;
3. review of treating physician/certified psychiatric nurse clinical specialist's treatment reports(notes) in terms of completeness and responsiveness to the court's Order as well as consistency with the ward's medical records;
4. types and dosage of all medications administered to ward and whether or not this is in compliance with the court's Order;
5. side effects of medication(s), if any;
6. whether ward remains incapable of making medical treatment decisions and whether conditions and circumstances which justified the present Order authorizing treatment with antipsychotic and other medications have substantially changed;
7. substance of interview of treating clinician regarding ward's present status and treatment needs, and if such person has been unavailable to the Monitor, details of attempts to contact him or her should be outlined with specificity and progress notes may be referred to; and,

**Duties of Rogers Monitor (continued)**

8. substance of interviews of associated medical, clinical or other staff, whether in person or by telephone, regarding ward's present status and treatment needs.

Submit report to court 30 days before scheduled review date which is noted in the most recent court Order.

Send copy of report to counsel for petitioner and to counsel for ward.

**Duties of counsel for ward**

Meet with ward.

Submit motion seeking waiver of ward's appearance.

Submit written assent to proposed order (SEE "Representations of Respondent's (Ward's) Counsel - DOCUMENT 5).

**Pleadings to be filed in court for administrative Rogers review**

An uncontested motion to extend (and/or amend) an existing Treatment Order for an interim period or for a period not to exceed one year may be allowed without hearing provided the following have been filed:

1. Motion to extend (and/or amend) treatment plan. (DOCUMENT 1)
2. Motion to waive appearance of ward. (DOCUMENT 2)
3. Updated affidavit of treating physician or certified psychiatric nurse clinical specialist (DOCUMENT 3) and treatment plan (DOCUMENT 4) which MUST include any proposed changes in medication or dosage, justification for the change, and any possible side effects.
4. Monitor's report which must include those areas detailed in "Appointment of *Rogers* Monitor" form (CJ-P 115) and which must address any proposed changes in medication or dosage.
5. Counsel for ward to submit Representations of Respondent's (Ward's) Counsel form (DOCUMENT 5) indicating that s/he does not object to proposed order and treatment plan.

6. Proposed “Substituted Judgment Extension Order”to which is attached the new treatment plan.

Note: Proposed Findings of Fact are not required as administrative review is possible only if uncontested.

Assistant judicial case managers will utilize a checklist for each case to ensure that all required documents are submitted an timely fashion and are available for administrative review or court hearing.

**THE ABOVE PROTOCOL IS AUTHORIZED BY THE CHIEF JUSTICE OF THE PROBATE AND FAMILY COURT DEPARTMENT.**

**Commonwealth of Massachusetts  
The Trial Court**

\_\_\_\_\_ **Division**     **Probate and Family Court Department**     **Docket No.** \_\_\_\_\_

**MOTION TO EXTEND - and AMEND - TREATMENT ORDER**

**In Re: Guardianship of** \_\_\_\_\_

NOW COMES the Petitioner who moves that this Court extend - and amend- the Substituted Judgment Treatment Plan previously authorized by the Court. The (amended) treatment plan is attached and incorporated herein.

IN SUPPORT of the request for extension, the Petitioner states that the Respondent remains unable to render informed consent to treatment with antipsychotic medications, and that it would be his / her substituted judgment to accept same, as described in the Affidavit and Treatment Plan attached.

Date: \_\_\_\_\_

Respectfully Submitted,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Attorney's Name (Please Print)

\_\_\_\_\_  
Attorney's Address

\_\_\_\_\_  
City/Town/State/Zip Code

Tel. No. (    ) \_\_\_\_\_

B.B.O.# \_\_\_\_\_

*E-mail* \_\_\_\_\_

THIS MOTION IS HEREBY    ☐    ALLOWED                      ☐    DENIED.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Justice of Probate and Family Court

**Commonwealth of Massachusetts  
The Trial Court**

\_\_\_\_\_ **Division**      **Probate and Family Court Department**      **Docket No.** \_\_\_\_\_

**MOTION TO WAIVE APPEARANCE OF WARD**

**In Re: Guardianship of** \_\_\_\_\_

NOW COMES Counsel for the Ward who moves that this Court excuse the Ward's presence.

Date: \_\_\_\_\_

Respectfully Submitted,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Attorney's Name (Please Print)

\_\_\_\_\_  
Attorney's Address

\_\_\_\_\_  
City/Town/State/Zip Code

Tel. No. (    ) \_\_\_\_\_

B.B.O.# \_\_\_\_\_

*E-mail* \_\_\_\_\_

THIS MOTION IS HEREBY    ☐    ALLOWED                      ☐    DENIED.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Justice of Probate and Family Court

**Commonwealth of Massachusetts  
The Trial Court**

\_\_\_\_\_ **Division**     **Probate and Family Court Department**     **Docket No.** \_\_\_\_\_

**CLINICIAN'S AFFIDAVIT and REPORT for EXTENSION - and AMENDMENT -  
of SUBSTITUTED JUDGMENT TREATMENT PLAN**

**In Re: Guardianship of** \_\_\_\_\_

I, \_\_\_\_\_, M.D. / R.N., C.S., do hereby swear and depose:

1. I am a psychiatrist / registered nurse and clinical nurse specialist licensed to practice, and to prescribe antipsychotic medication, in Massachusetts.
2. I am the treating clinician for \_\_\_\_\_ (Respondent) and have been since \_\_\_\_\_. I last saw him / her on \_\_\_\_\_.
3. This report is based upon my personal examination(s) of the Respondent which occurred on \_\_\_\_\_, as well as my review of his / her clinical records, consultations with other treatment providers involved in his / her care, my review of the court authorized treatment plan, and of the most recent affidavits and reports submitted to the court in this matter.

**BACKGROUND AND COURSE OF TREATMENT SINCE LAST ORDER**

4. The Respondent is a \_\_\_\_\_ - year old man / woman with a diagnosis of \_\_\_\_\_. S/he suffers from a major mental illness which severely impairs his / her treatment. S/he has been previously adjudicated incompetent to give informed consent to treatment with antipsychotic medications, and has been treated pursuant to a court approved substituted judgment treatment order.

5. Since the last treatment plan was approved by the courts, Respondent has been treated in accordance with said treatment plan with the following medications:

MEDICATION

DOSE

\_\_\_\_\_  
\_\_\_\_\_

and has experienced the following side effects: \_\_\_\_\_

The side effects have been mild / moderate / severe and have been treated with \_\_\_\_\_

\_\_\_\_\_



6. As a result of the treatment the Respondent's condition has not changed substantially. S/he has remained stable / shown some improvement / shown some deterioration. The specific facts supporting this opinion are as follows: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### COMPETENCE

7. In my opinion, the Respondent continues to be unable to make informed decisions regarding antipsychotic medications due to his / her mental illness, and there have been no significant changes in circumstances that would alter his / her substituted judgment to accept the treatment being offered. The facts supporting this opinion are as follows: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### TREATMENT PLAN

8. The proposed treatment plan is as follows (incl. medication, dosage, and dose range):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The reasons for any proposed changes from previous plans are: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### SUBSTITUTED JUDGMENT

9. Expressed Preference: The Respondent's expressed preference is to continue to accept / reject the proposed treatment.

10. Religious Conviction: The Respondent has / has not expressed religious beliefs which would inhibit compliance with the proposed treatment.

11. Impact on Family: The Respondent's relationship with his / her family would / would not affect his / her decision regarding treatment were s/he competent. If s/he would take the impact on the family into account, such impact would be: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. Risks and Benefits of Proposed Treatment: The risks and benefits of the proposed medications and treatment have been described in previous affidavits which I have reviewed and reaffirm. The risks and benefits of any proposed new medications are attached hereto.

13. Prognosis Without Treatment: The prognosis without treatment is poor. Without treatment it is likely that the Respondent's condition would deteriorate and s/he would require prolonged hospitalization and / or increasingly restrictive settings.

14. Prognosis With Treatment: The prognosis with treatment is fair / guarded / good. With treatment it is expected that the Respondent will continue to make progress / remain stable, with the prospect of increasing levels of independence / with the ability to remain in the community / eventual discharge from the hospital to a community setting; other: \_\_\_\_\_

Respectfully submitted and signed under the penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_.

\_\_\_\_\_  
M.D. / R.N., C.S

\_\_\_\_\_  
Name (Please Print)

NOTE: Clinician's Affidavit and Report for Extension - and Amendment - of Substituted Judgment Treatment Plan, and, Treatment Plan **to be filed 6 weeks prior to Review Date** set out in most recent Order.

**Commonwealth of Massachusetts**

**The Trial Court**

\_\_\_\_\_ **Division**      **Probate and Family Court Department**      **Docket No.** \_\_\_\_\_

**TREATMENT PLAN**

**In Re: Guardianship of** \_\_\_\_\_

ANTIPSYCHOTIC MEDICATION:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DOSAGE AND DOSE RANGE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ALTERNATIVE ANTIPSYCHOTIC  
MEDICATION:

\_\_\_\_\_  
\_\_\_\_\_

DOSE RANGE:

\_\_\_\_\_  
\_\_\_\_\_

Blood level testing, if and as appropriate, shall be administered in accordance with current clinical protocols. Medications for side effects may be administered if clinically indicated.

Periodic reviews of the treatment plan will be done to assess the effectiveness of the medication and to check for side effects. The medication doses will be adjusted within the approved range, as clinically appropriate.

THE WITHIN TREATMENT PLAN IS HEREBY APPROVED.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Justice of the Probate and Family Court

REVIEW DATE: \_\_\_\_\_

EXPIRATION DATE: \_\_\_\_\_

**Commonwealth of Massachusetts**

**The Trial Court**

\_\_\_\_\_ **Division**     **Probate and Family Court Department**     **Docket No.** \_\_\_\_\_

**REPRESENTATIONS of RESPONDENT'S (WARD'S) COUNSEL**

**In Re: Guardianship of** \_\_\_\_\_

1. I am appointed counsel for the Respondent \_\_\_\_\_. I have represented him / her in various mental health related cases in this and other courts for \_\_\_\_\_ months/years.
2. The Petitioner, \_\_\_\_\_, has filed a Motion to Extend / Amend the existing Order authorizing treatment of the Respondent with antipsychotic medications for an additional \_\_\_\_\_ months.
3. For the following reasons, I do not object to entry of an Order granting the Petitioner's motion.
4. I have reviewed the documents in this case which are relevant to the Petitioner's motion, including the affidavit of \_\_\_\_\_ M.D. / RN, CS and the report of the court appointed Monitor.
5. Since the entry of the Order currently in effect, I have met with my client on the following occasions, at least one such meeting being within 30 days of the filing of this Representation, to discuss this motion: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_. I have explained the motion and the court process to him / her in detail.
6. This matter has been before the court on the following dates: \_\_\_\_\_ (initial determination of incompetency and substituted judgment), and, most recently on \_\_\_\_\_ (review / extension / other).
7. In accordance with the decision in *Guardianship of Brandon*, 424 Mass. 482 (1997), to prevail at a hearing to contest the Petitioner's motion, the ward would have the burden of demonstrating that there has been a substantial change in circumstances since the entry of the court's last Order. In my professional opinion, it would be extremely difficult to sustain such a burden and I have so advised the ward.
8. In my professional opinion, my client is able / unable to sufficiently understand the instant proceeding and its consequences.

9. My client has indicated to me that s/he does not wish to contest the motion.
10. My client has indicated to me that s/he does not wish to be present at the instant proceedings.
11. I agree with Petitioner that the proposed Order, if issued, should be reviewed in \_\_\_\_\_ months.

Date: \_\_\_\_\_

Respectfully Submitted,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Attorney's Name (Please Print)

\_\_\_\_\_  
Attorney's Address

\_\_\_\_\_  
City/Town/State/Zip Code

Tel. No. (    ) \_\_\_\_\_

B.B.O.# \_\_\_\_\_

*E-mail* \_\_\_\_\_

**Commonwealth of Massachusetts  
The Trial Court**

\_\_\_\_\_ **Division**     **Probate and Family Court Department**     **Docket No.** \_\_\_\_\_

**ORDER**

**In Re: Guardianship of** \_\_\_\_\_

Upon the motion filed on \_\_\_\_\_, which was assented to by \_\_\_\_\_, counsel for the ward, on \_\_\_\_\_, in accordance with the recommendation of the Monitor, and after hearing on \_\_\_\_\_ **-or-** without hearing,

**IT IS HEREBY ORDERED THAT:**

The ward's clinician may administer medications in accordance with the attached treatment plan dated \_\_\_\_\_ which is incorporated by reference.

THIS TREATMENT ORDER SHALL EXPIRE ON \_\_\_\_\_. If the  
(14 months from the date of the previous Order)

moving party (i.e. original petitioner, ward's guardian or his or her counsel, state agency, etc.) proposes that the treatment should continue, IT SHALL BE REVIEWED BY THIS COURT ON \_\_\_\_\_, at which time the moving party and counsel for the ward shall  
(12 months from the date of this Order)

appear. The ward shall also appear unless his or her presence is excused by leave of Court.

Unless otherwise ordered by the Court, a motion to extend - and amend - the Order filed in timely fashion may be allowed without hearing on the review date, to become effective on the expiration date of this Order, in the event that the following documents have been filed with the court:

- A. an up-to-date clinician's affidavit and treatment plan (to be filed six (6) weeks before review date);
- B. a proposed order;
- C. Monitor's report (to be filed 30 days before review date);
- D. written representation of ward's counsel that s/he does not object.

In order to fulfill their respective responsibilities in this matter, the moving party, counsel for the ward, and the treatment Monitor shall have access, during the term of this Order and any extensions thereof, to any and all medical, hospital, and / or psychiatric records of the ward.

\_\_\_\_\_ of \_\_\_\_\_  
is appointed - or - shall continue as treatment monitor. The treatment Monitor shall file a report by  
\_\_\_\_\_. The parties shall serve the Monitor with a copy of any and  
(11 months from date of this Order)  
all pleadings or other submissions to the Court relating to the treatment plan.

The responsibilities of the treatment Monitor shall include, but not be limited to, the following:

A. Meeting with the ward within thirty (30) days of receipt of this Order (new appointments ONLY), and thereafter, as appropriate.

B. Filing written reports with the court as outlined above setting forth the following:

1. where and in what circumstances ward is currently living;

2. substance of meeting with the ward;

3. review of clinician's treatment reports(notes) in terms of completeness and responsiveness to the Court's Order and, as well as consistency with the ward's medical records;

4. types and dosage of all medications administered to ward and whether or not this is in compliance with the Court's Order;

5. side effects of medication(s), if any;

6. whether ward remains incapable of making medical treatment decisions and whether conditions and circumstances which justified the present Order authorizing treatment with antipsychotic and other medications have substantially changed;

7. substance of interview of treating clinician regarding ward's present status and treatment needs, and if such person has been unavailable, details of attempts to contact him or her should be outlined with specificity and progress notes may be referred to; and,

8. substance of interviews of associated medical, clinical or other staff, whether in person or by telephone, regarding ward's present status and treatment needs.

IN ADDITION, AT ANY TIME, ANY INTERESTED PARTY, INCLUDING COUNSEL FOR THE WARD, MAY MOVE TO ALTER, EXPAND, LIMIT OR TERMINATE ALTOGETHER THIS ORDER.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Justice of the Probate and Family Court